

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT BERGSTROM, et al.,

CASE NO. C21-55 MJP

Plaintiffs,

ORDER

V.

UNITED STATES NAVY, et al.,

Defendants.

This matter comes before the Court on Plaintiffs' motion to amend, withdraw, and cure, (Dkt. No. 15), which seeks relief with respect to Plaintiffs' second motion for summary judgment, (Dkt. No. 14). Having considered the motion and all relevant proceedings herein, the Court GRANTS Plaintiffs' motion to the extent set forth in this Order. Plaintiff's second motion for summary judgment is marked WITHDRAWN without prejudice.

This is an action against the U.S. Navy, the Secretary of the Navy in his official capacity, the U.S. Department of Defense, and the United States. (Dkt. No. 1.) The complaint was filed January 15, 2021. Id. Plaintiffs moved for summary judgment on February 1. (Dkt. No. 8.) The Court issued an order striking Plaintiffs' motion for summary judgment, noting that

1 Defendants have 60 days after service to answer under Federal Rule of Civil Procedure 12(a)(2).
2 (Dkt. No. 12.) Plaintiffs filed a second motion for summary judgment on May 26, noted for
3 decision on June 25. (Dkt. No. 14.) Plaintiffs filed the instant motion to amend, withdraw, and
4 cure on June 3, (Dkt. No. 15), which was re-noted to June 11.

5 Plaintiffs are unsure of how to serve Defendants and ask the Court for various relief with
6 respect to their second motion for summary judgment, depending on what Federal Rule of Civil
7 Procedure 4 requires. Specifically, Plaintiffs state that they did not serve the local United States
8 Attorney until June 1.¹ (Dkt. No. 15, Ex. 1 at 2.) Nevertheless, rather than withdraw their
9 second motion for summary judgment, which they can do on their own, see LCR 7(l), Plaintiffs
10 have asked the Court to determine whether service has been completed.

11 The Federal Rules of Civil Procedure set forth specific requirements for serving the
12 United States, U.S. agencies, and U.S. officers or employees in an official capacity. To serve the
13 United States, a party must (a) deliver a copy of the summons and complaint to the local U.S.
14 attorney (using either of two specified methods under FRCP Rule (4)(i)(1)(A)(i) and (ii)); (b)
15 send a copy of each by registered or certified mail to the Attorney General of the United States;
16 (c) and, if the action challenges an order of a nonparty agency or officer of the United States,
17 send a copy of each by registered or certified mail to the agency or officer. FRCP Rule 4(i)(1).
18 To serve a U.S. agency or officer in their official capacity, a party must serve the United States,
19 via Rule 4(i)(1), and also send a copy of the summons and complaint to the agency or officer.
20 FRCP Rule 4(i)(2).

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24 ¹ It appears Plaintiffs' statement that service on the U.S. Attorney was complete on July 1, 2021 is a mistake, (Dkt. No. 15 at 2), and that the date should have been June 1, 2021 (see Dkt. Id. at 3 & Ex. 1 at 2).

1 Plaintiffs sue the United States, two U.S. agencies, and a U.S. official in his official
2 capacity, so they must comply with the requirements of Rule 4(i)(1) and 4(i)(2) to complete
3 service. Plaintiffs admit that they did not deliver a copy of the summons and complaint to the
4 local U.S. attorney until June 1. Therefore, it is undisputed that service is not complete.
5 Plaintiffs' motion (Dkt. No. 15) is GRANTED to the extend that their second motion for
6 summary judgment (Dkt. No. 14) is WITHDRAWN without prejudice.

7 The clerk is ordered to provide copies of this order to all counsel.

8 Dated June 21, 2021.

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10 Marsha J. Pechman
11 United States Senior District Judge
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